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In the Supreme Court of the United States

OCTOBER TERM, 1956

No. 1033

DEE BROWN WALKER AND ANN G. WALKER,
PETITIONERS

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the District Court (Pet. 18–20) is not officially reported. The opinion of the Court of Appeals (Pet. 21–26) is reported at 240 F. 2d 601.

JURISDICTION

The judgment of the Court of Appeals was entered on February 5, 1957 (Pet. 27), and rehearing was denied on March 9, 1957 (R. 41). The petition for a writ of certiorari was filed May 27, 1957. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1).

QUESTION PRESENTED

Whether Section 294 (d) (1) (A) of the Internal Revenue Code of 1939 is unconstitutional in providing for additions to tax for the failure, due to willful neglect, to make and file a declaration of estimated tax.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

Constitution of the United States, Fifth Amendment:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Internal Revenue Code of 1939:

> SEC. 294. ADDITIONS TO THE TAX IN CASE OF NONPAYMENT.
>
> (a) *Tax Shown on Return.*—
>
> * * * * *
>
> (d) [as added by Sec. 118 (a) of the Revenue Act of 1943, c. 63, 58 Stat. 21, and amended by Sec. 13 (b) of the Individual Income Tax Act of 1944, c. 210, 58 Stat. 231] *Estimated Tax.*—
>
> (1) *Failure to file declaration or pay installment of estimated tax.*—

(A) *Failure to file declaration.*—In the case of a failure to make and file a declaration of estimated tax within the time prescribed, unless such failure is shown to the satisfaction of the Commissioner to be due to reasonable cause and not to willful neglect, there shall be added to the tax 5 per centum of each installment due but unpaid, and in addition, with respect to each such installment due but unpaid, 1 per centum of the unpaid amount thereof for each month (except the first) or fraction thereof during which such amount remains unpaid. In no event shall the aggregate addition to the tax under this subparagraph with respect to any installment due but unpaid, exceed 10 per centum of the unpaid portion of such installment. For the purposes of this subparagraph the amount and due date of each installment shall be the same as if a declaration had been filed within the time prescribed showing an estimated tax equal to the correct tax reduced by the credits under sections 32 and 35.

* * * * *

(26 U. S. C. 1952 ed., 294.)

STATEMENT

The facts are as follows:

Through willful neglect, taxpayers, husband and wife, failed to make a timely declaration of their estimated tax for the calendar year 1952. (R. 12–13.) Because of such failure, the Commissioner assessed them with additional tax in the amount of $203.77, pursuant to Section 294 (d) (1) (A) of the Internal Revenue Code of 1939. (R. 12–13.) Taxpayers paid the $203.77 and, after filing a claim for refund thereof

(R. 13), instituted suit for refund (R. 1–4) solely on the ground that "the statute upon which the penalty was collected is unconstitutional" (R. 3).

The District Court and Court of Appeals both denied recovery, entering judgment for the United States. (Pet. 17–27.)

ARGUMENT

As grounds for granting the writ (Pet. 4–6), taxpayers assert that the question presented is one which has not been passed upon by this Court and that the decision below is contrary to *Helvering* v. *Mitchell*, 303 U. S. 391. However, the alleged conflict is nonexistent and the question presented is not one requiring further review by this Court.

1. As the court below indicated (Pet. 23, 26), prior decisions of this Court sufficiently refute taxpayers' argument that Section 294 (d) (1) (A) of the 1939 Code, *supra*, pp. 2–3, is unconstitutional.[1] Section 58 (26 U. S. C. 1952 ed., 58), which requires the filing of a declaration of estimated tax in certain prescribed circumstances, is part of the Congressional plan to

[1] In their complaint (R. 3) and brief in the court below, taxpayers attacked as unconstitutional only Section 294 (d) (1) (A), the section which provides for additions to tax for willfully neglecting to make and file a declaration of estimated tax. Taxpayers now refer to "two statutes" as being involved (Pet. 4), the other one apparently being Section 58 (26 U. S. C. 1952 ed., 58), which requires the filing of a declaration of estimated tax and was first referred to by the taxpayers in their petition for rehearing below. The decision below covers both statutes although the court stated (Pet. 23–24) that taxpayers did not directly attack the statutory requirement that estimates be filed.

put taxpayers on a pay-as-you-go basis; it was intended to supplement the withholding provisions of the Code by requiring current payment of tax on that income on which the tax could not, as a practical matter, be subjected to withholding at the source. See H. Rep. No. 401, 78th Cong., 1st Sess., pp. 11–13, 32–39 (1943 Cum. Bull. 1283, 1290–1291, 1307–1312); S. Rep. No. 221, 78th Cong., 1st Sess., pp. 8–10, 35–43 (1943 Cum. Bull. 1314, 1319–1321, 1340–1346); H. Conference Rep. No. 510, 78th Cong., 1st Sess., pp. 49–59 (1943 Cum. Bull. 1351, 1367–1374). The holding that the provision for the withholding of tax at source is constitutional as a proper exercise of the taxing power (*Brushaber* v. *Union Pacific R. R.*, 240 U. S. 1) strongly supports the constitutionality of the requirement for the filing of a declaration of estimated tax. Congress has broad discretion in establishing procedures by which its tax exactions may be made effective (*Steward Machine Co.* v. *Davis*, 301 U. S. 548; *Helvering* v. *Davis*, 301 U. S. 619) and that discretion extends to the imposition of additional taxes by way of a civil sanction, as under Section 294 (d) (1) (A), and to permitting such civil sanction to be imposed on the basis of facts determined by an administrative agency (*Helvering* v. *Mitchell*, 303 U. S. 391). Thus, there is no substantial question as to the constitutionality of Section 294 (d) (1) (A). See *Stephan* v. *Commissioner*, 197 F. 2d 712 (C. A. 5th), and *Coates* v. *Commissioner*, 234 F. 2d 459 (C. A. 8th), where the constitutionality of Section 294 (d) was assumed, and compare *Porth* v. *Brodrick*, 214 F. 2d 925 (C. A. 10th); *Abney* v. *Campbell*, 206 F. 2d

836 (C. A. 5th), certiorari denied, 346 U. S. 924; *Cain* v. *United States,* 211 F. 2d 375 (C. A. 5th), certiorari denied, 347 U. S. 1013; *Kellems* v. *United States,* 97 F. Supp. 681 (D. Conn.).

2. Taxpayers do not even attempt to show wherein the decision below is contrary to *Helvering* v. *Mitchell, supra.* Their argument in support of the asserted conflict (Pet. 6) is simply that the *Mitchell* case is distinguishable. Insofar as *Mitchell* has any application, it supports the decision below since it upholds the validity of an assessment of an additional tax as a civil penalty.

CONCLUSION

The decision below is correct and involves no important question or conflict of decisions. The petition for a writ of certiorari should be denied.

Respectfully submitted.

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JUNE 1957.

U. S. GOVERNMENT PRINTING OFFICE: 1957